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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/528,184

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Frank K. Crundwell

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EXAMINER

MCGUTHRY BANKS, TIMA MICHELE

ART UNIT

PAPER NUMBER

1793

MAIL DATE

DELIVERY MODE

08/18/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/528,184

Applicant(s)

CRUNDWELL ET AL.

Examiner

TIMA M. MCGUTHRY-BANKS

Art Unit

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 9-56 is/are rejected.
- 7) ☒ Claim(s) 5-8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CD/CIS)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

Claims 1-4, 7, 8, 10-12, 14-16, 18-20, 23, 24, 27, 29, 30, 34, 35, 38-42, 44, 46-49 and 51 are as originally filed, Claims 5, 9, 13, 17, 21, 25, 26, 28, 33, 36, 37, 43, and 54-56 are as previously presented, Claims 6, 22, 31, 32, 45, 50, 52 and 53 are as currently amended, and Claims are 57 and 58 are cancelled.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4, 9, 21, 25, 28-32, 45-47, 49-51 and 54-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Kohr et al (US 6,110,253).

Kohr et al is applied as described in the office action mailed 17 January 2008.

Claims 1, 2, 13-15 and 17-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Harlamovs et al (US 6,736,877 B2).

Harlamovs et al is applied as described in the office action mailed 17 January 2008.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harlamovs et al as applied to Claims 1, 13-15 and 17-19 above.

Harlamovs et al is applied as described in the office action mailed 17 January 2008.

Claims 10-12 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kohr et al as applied to Claims 1, 9 and 22 above.

Kohr et al is applied as described in the office action mailed 17 January 2008.

Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kohr et al as applied to claim 1 above, and further in view of Norton et al (US 6,860,919).

Kohr et al in view of Norton et al is applied as described in the office action mailed 17 January 2008.

Claims 33-40, 42-44, 52 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kohr et al as applied to claim 1 above, and further in view of MacLeod et al (Applied Environmental Microbiology).

Kohr et al in view of MacLeod et al is applied as described in the office action mailed 17 January 2008.

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kohr et al in view of MacLeod et al as applied to claims 1, 33, 37 and 38 above, and further in view of Harrington (US 6,435,769 B2).

Kohr et al in view of MacLeod et al and Harrington is applied as described in the office action mailed 17 January 2008.

Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kohr et al in view of MacLeod et al as applied to claims 1 and 45 above, and further in view of Harrington.

Kohr et al in view of MacLeod et al and Harrington is applied as described in the office action mailed 17 January 2008.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 33-49 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19 of copending Application No. 10/528/381 in view of Kohr et al. The provisional double patenting rejection is applied as described in the office action mailed 17 January 2008.

This is a provisional obviousness-type double patenting rejection.

Allowable Subject Matter

Claims 5-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not disclose or suggest determining the advection at or below a heap surface as in Claim 5.

Response to Arguments

Applicant's arguments filed 17 July 2008 have been fully considered but they are not persuasive. Applicant argues that Kohr et al does not teach actively controlling the irrigation rate in Claim 1. Applicants do not claim an active control step. Kohr et al meets the limitation of controlling by determination by the teaching of "affected by ... certain variables." Regarding Claim 28, the heap is heated to a predetermined temperature. Applicant also argues that Harlamovs does not disclose or suggest active control of the irrigation rate. Again, applicants do not claim an active control step.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TIMA M. MCGUTHRY-BANKS whose telephone number is (571)272-2744. The examiner can normally be reached on M-F 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Roy King/
Supervisory Patent Examiner, Art Unit
1793

Application/Control Number: 10/528,184
Art Unit: 1793

Page 7

/T. M. M./
Examiner, Art Unit 1793
18 August 2008